

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Murray L. Neal

Application No.: 10/788,716

Filed: February 27, 2004

For: **PRIMARY FRAMING SYSTEM AND A
METHOD OF INSTALLATION**

Examiner: Phi Dieu Tran A

Art Group: 3633

Confirmation No.: 6779

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant (hereinafter "Appellant") submits one copy of the following Reply Brief pursuant to 37 C.F.R. § 41.41 for consideration by the Board of Patent Appeals and Interferences. Please charge any amount due or credit any overpayment to deposit Account No. 02-2666.

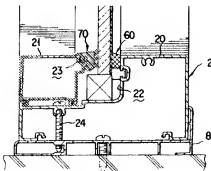
ARGUMENT

In the Examiner's Answer ("Answer") dated September 30, 2009 to Appellant's Appeal Brief ("Brief") mailed on June 17, 2009, the Examiner maintains the rejection of claims 1, 7 and 8 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,746,032 issued to Koike et al. ("Koike"), claims 1, 7-9, 29 and 30 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 4,525,966 issued to Litchfield et al. ("Litchfield") in view of U.S. Patent No. 3,016,993 issued to Owen ("Owen") and claims 10, 11 and 31 under 35 U.S.C. §103(a) as unpatentable over Litchfield in view of Owen and further in view of U.S. Patent No. 4,115,964 issued to Montrouil ("Montrouil") raised in the Final Office Action ("Final Action") mailed December 11, 2008.

Appellant respectfully submits, for at least the reasons previously set forth and those herein, neither Koike, Litchfield, Owen nor Montrouil, alone or in combination, teach, suggest or render predictable each and every element of claims 1, 7-11 and 29-31.

I. The Prior Art Fails to Disclose "a second segment perpendicular to the first segment with a cavity having an enclosed cross-section formed therein" as Claimed.

In the Answer, the Examiner maintains that Koike discloses the elements of "a second segment perpendicular to the first segment with a cavity having an enclosed cross-section formed therein that occupies a substantial portion of the second segment" as recited in claim 1. See Answer, pages 7-8. In particular, the Examiner alleges Koike discloses a second segment (2, 20, 22) having a cavity (the space between the portions 20, 2). The Examiner alleges the cavity "is formed between the portions (20, 2, 22) and enclosed within the portions of the second segment" (emphasis added). Figure 2 of Koike, which illustrates portions 20, 2 and 22, is reproduced below.



As can be seen in Figure 2 of Koike, the alleged cavity (i.e., area between the portions 20, 2, 22 forming the second segment) does not have an **enclosed** cross-section formed within the second segment. Rather, as recognized by the Examiner, the cavity is formed by portions 20, 2, 22 of the alleged second segment. Portions 20, 2, 22 only define three sides of the alleged cavity. The term “enclosed” implies that the cavity is closed in on all sides. Thus, to “enclose” the alleged cavity of Koike, element 8 must further define a side of the cavity. The Examiner alleges, however, that element 8 forms the first segment. Therefore, if element 8 were relied upon to enclose the alleged cavity of Koike, the cavity would no longer be enclosed within the second segment as required by claim 1. Accordingly, nowhere within Koike is a cavity enclosed within a second segment, which in turn must be perpendicular to the first segment, disclosed.

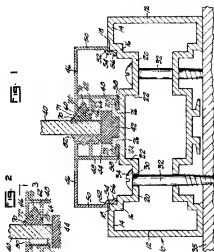
Thus, for at least the foregoing reasons, Koike fails to disclose each of the elements of claim 1 and dependent claims 7 and 8. Accordingly, claims 1, 7 and 8 are not anticipated by Koike. Appellant respectfully requests that the rejection of claims 1, 7 and 8 under 35 U.S.C. §102 be overturned.

II. The Prior Art Fails to Disclose “a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site” as Claimed.

In the Answer, the Examiner maintains that Litchfield in view of Owen discloses the elements of “a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site” as recited in claims 1 and 29. See Answer, page 8. In particular, the Examiner alleges Litchfield and Owen disclose window systems and frames to be mounted to window openings, Owen discloses a plurality of holes that enable the sub-frame to be attached to a supporting structure, therefore, Litchfield as modified in view of Owen may be attached to any supporting structure including a head, jamb or sill. The Examiner further alleges that the language “to be secured to one of a head, jamb and sill at the site” is intended use language therefore in the absence of a structural difference between the claimed invention and prior art, the element does not distinguish claims 1 and 29 from the prior art.

Appellant respectfully submits that the claimed holes through which the sub-frame is to be secured to one of a head, jamb and sill at a job site are structurally different from the holes disclosed in Owen. In particular, the Examiner alleges that Owen discloses holes 30 through

which screws 32 are inserted. As disclosed in Owen, the shanks of screws 32 are secured to a building framing member 35, which is in turn secured to the building. See Owen, col. 2, lines 53-55 and 59-61. As can be seen from Figure 1 of Owen reproduced below, holes 30 are formed widthwise (as opposed to lengthwise) through wall 14 of frame member 10 so that screws 32 can be inserted through wall 14, which is parallel to member 35, and into member 35.



In contrast, the first plurality of holes of claims 1 and 29 are dimensioned so as to allow the sub-frame to be secured to a head, jamb, or sill at the job site which may, for example, be abutting an end of the sub-frame. For example, first segment 312 may be secured to jamb piece 118 shown in Figure 1. See Application, page 7, paragraph [0031]. Since jamb piece 118 abuts an end of first segment 312 (see Figure 1, note paragraphs [0027] and [0030] disclose that first segment 312 corresponds to piece 114 of Figure 1), screws holding first segment 312 to jamb 118 are driven into first segment 312 in a lengthwise direction. To accommodate this sub-frame configuration, as disclosed in Figure 3 and on page 6, paragraph [0031] of the Application, holes 318 may be formed lengthwise in the first segment 312. As a result of the lengthwise orientation of holes 318, the screws may be inserted through corresponding holes 318 to hold the sub-frame in place. Accordingly, for at least the above discussed reasons, the claimed holes through which the sub-frame is to be secured to one of a head, jamb and sill at a job site, are structurally different from the holes disclosed in Owen. Moreover, even if Litchfield were modified to include the holes of Owen, due to the orientation of the holes, they would not allow the structure of Litchfield and/or Owen to be secured to a head, jamb, or sill at the job site which may, for

example, be abutting an end of the sub-frame. Accordingly, since the prior art structure relied upon by the Examiner is structurally different from the claimed element and is not capable of performing the intended use, it does not meet each of the elements of claims 1 and 29.

Thus, for at least the foregoing reasons, Litchfield and Owen fail to disclose each of the elements of claims 1, 29 and dependent claims 7-9 and 30. Accordingly, claims 1, 7-9, 29 and 30 are not obvious in view of Litchfield and Owen. Appellant respectfully requests that the rejection of claims 1, 7-9, 29 and 30 under 35 U.S.C. §103 be overturned.


CONCLUSION AND RELIEF

For at least the foregoing reasons, it is respectfully requested that the rejections of claims 1, 7-11 and 29-31 based on 35 U.S.C. §§ 102,103 be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: November 19, 2009



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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on November 19, 2009.



Si Vuong